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ATLANTIC COAST LINE R. CO. *v.* WARRINGTON.

March 17, 1921.

[106 S. E. 341.]

1. Stipulations (§ 21*)—Evidence Held Not to Establish an Agreement Permitting Grounds of Demurrer to Be Filed Subsequently to Demurrer.—Evidence held insufficient to establish that, on defendant's oral announcement that it demurred to the evidence, it was expressly agreed in open court that the grounds of demurrer should be filed after conclusion of the evidence and retirement of jury, instead of prior thereto, as required by Acts 1912, c. 42.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 322.]

2. Trial (§ 154*)—Plaintiff Held Not to Have Waived Timely Filing of Grounds of Demurrer to Evidence.—Plaintiff, by failure to demand that defendant file the grounds of the demurrer to the evidence at the conclusion of the evidence and before the jury retired, as required by Acts 1912, c. 42, and by expressly agreeing that the argument on the demurrer should be in writing and filed later, did not by application waive the filing of the grounds at the time required by such statute.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 520.]

3. Trial (§ 154*)—Statute as to Submission of Grounds of Demurrer to Evidence Is Mandatory.—Acts 1912, c. 42, requiring grounds of demurrer to evidence to be submitted in writing at the conclusion of the evidence and before the jury retires, is mandatory.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 547.]

4. Trial (§ 154*)—Requirement of Timely Written Grounds of Demurrer to Evidence May Be Waived.—The submission in writing of grounds of demurrer to evidence at the conclusion of the evidence and before the jury retires, under Acts 1912, c. 42, may be waived by agreement between the parties; but such agreement, being in derogation of the statute, must be clearly established.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 410.]

Error to Circuit Court, Nansemond County.

Action by S. F. Warrington against the Atlantic Coast Line Railroad Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Mann & Townsend, of Petersburg, for plaintiff in error.

Smith & Smith, of Richmond, and *Saunders & Hutton*, of Suffolk, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.